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Paper No. 37

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AUG 13 2004

DIRECTOR OFFICE  
TECHNOLOGY CENTER 2100

In re Application of: Harry Major et al. )  
Application No.: 09/545,962 )  
Filed: April 10, 2000 )  
For: NOTIFICATION SYSTEM AND )  
METHOD FOR A MOBILE )  
COMMUNICATION DEVICE )

**DECISION ON PETITION  
UNDER 37 C.F.R. § 1.181 TO  
WITHDRAW HOLDING OF  
ABANDONMENT**

This is a decision in response to the petition , filed January 22, 2004, under 37 CFR §1.181 requesting the withdrawal of the holding of abandonment.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue fee within the statutory period of three months from the mailing date of the Notice of Allowance, on June 9, 2003. A Notice of Abandonment was mailed on October 17, 2003.

In the absence of any apparent irregularity associated with the mailing of an Office communication, the Office may presume that the communication was properly mailed to the address of record. This presumption may be overcome by showing that the Office communication was not received.

M.P.E.P. § 711.03(c), section II states:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

In support of the petition, Applicant's attorney, David B. Cochran, attests that the Office action was not received, and that upon conducting a search, no record of said Office action was found in the Attorney's file for this application. Petitioner supplies a copy of the docket records for Application Serial No. 09/545,962 and states that this is where the record would have been entered in the firm's docketing system had the Office action been received and docketed. The docket record shows no entry reflecting receipt of the Office communication mailed June 9, 2003.

Petitioner has met the criteria of set out in MPEP 711.03(C) for establishing failure to receive an Office action. The petition is **GRANTED**. The Notice of Abandonment is **WITHDRAWN**.

The current file wrapper is based on papers submitted by applicant's representative to reconstruct the lost file. The application is being forwarded to the Examiner to reprint the Office action of June 26, 2002. The application file will then be forwarded to the Technology Center support staff. The reprinted Notice of Allowability and Notice of Allowance and Issue Fee Due, originally mailed June 26, 2002 and remailed June 9, 2003 will be remailed with the three month non-extendable statutory period restarted to run from the date of the remailing.

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